

## (h) TERMS.—

(1) INITIAL APPOINTMENTS.—For the first appointments of Electronic Payment System Judges after the date of enactment of this Act—

(A) the Chief Electronic Payment System Judge shall be appointed for a term of 6 years;

(B) 1 Electronic Payment System Judge who is not the Chief Electronic Payment System Judge shall be appointed for a term of 4 years; and

(C) 1 Electronic Payment System Judge who is not the Chief Electronic Payment System Judge shall be appointed for a term of 2 years.

(2) SUBSEQUENT APPOINTMENT.—After the appointments under paragraph (1), an Electronic Payment System Judge shall be appointed for a term of 6 years.

(3) REAPPOINTMENT.—An individual serving as an Electronic Payment System Judge may be reappointed to subsequent terms.

(4) START AND END OF TERMS.—The term of an Electronic Payment System Judge shall begin on the date on which the term of the predecessor of that Electronic Payment System Judge ends. If a successor Electronic Payment System Judge has not been appointed as of the date on which the term of office of an Electronic Payment System Judge ends, the individual serving that term may continue to serve as an interim Electronic Payment System Judge until a successor is appointed.

## (i) VACANCIES OR INCAPACITY.—

(1) VACANCIES.—The Attorney General and the Chairman shall act expeditiously to fill any vacancy in the position of Electronic Payment System Judge, and may appoint an interim Electronic Payment System Judge to serve until an Electronic Payment System Judge is appointed to fill the vacancy under this section. An Electronic Payment System Judge appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed shall be appointed for the remainder of that term.

(2) INCAPACITY.—If an Electronic Payment System Judge is temporarily unable to perform the duties of an Electronic Payment System Judge, the Attorney General and Chairman may appoint an interim Electronic Payment System Judge to perform such duties during the period of such incapacity.

## (j) COMPENSATION.—

(1) JUDGES.—The Chief Electronic Payment System Judge shall receive compensation at the rate of basic pay payable for level AL-1 for administrative law judges under section 5372(b) of title 5, United States Code, and each Electronic Payment System Judge who is not the Chief Electronic Payment System Judge shall receive compensation at the rate of basic pay payable for level AL-2 for administrative law judges under such section. The compensation of the Electronic Payment System Judges shall not be subject to any regulations adopted by the Office of Personnel Management under its authority under section 5376(b)(1) of title 5, United States Code.

(2) STAFF MEMBERS.—Of the 3 staff members appointed under subsection (g)—

(A) the rate of pay of 1 staff member shall be not more than the basic rate of pay payable for level 10 of GS-15 of the General Schedule;

(B) the rate of pay of 1 staff member shall be not less than the basic rate of pay payable for GS-13 of the General Schedule and not more than the basic rate of pay payable for level 10 of GS-14 of such Schedule; and

(C) the rate of pay of 1 staff member shall be not less than the basic rate of pay payable for GS-8 of the General Schedule and not

more than the basic rate of pay payable for level 10 of GS-11 of such Schedule.

(3) LOCALITY PAY.—All rates of pay established under this subsection shall include locality pay.

## (k) INDEPENDENCE OF ELECTRONIC PAYMENT SYSTEM JUDGES.—

## (1) IN MAKING DETERMINATIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Electronic Payment System Judges—

(i) shall have full independence in establishing fees and terms for access to covered electronic payment systems and in issuing any other ruling under this Act; and

(ii) may consult with the Attorney General and the Chairman on any matter other than a question of fact.

(B) CONSULTATION.—The Electronic Payment System Judges shall consult with the Attorney General and the Chairman regarding any determination or ruling that would require that any act be performed by the Attorney General or the Chairman, and any such determination or ruling shall not be binding upon the Attorney General or the Chairman.

## (2) PERFORMANCE APPRAISALS.—

(A) IN GENERAL.—Notwithstanding any other provision of law or any regulation of the Department of Justice or Federal Trade Commission, and subject to subparagraph (B), the Electronic Payment System Judges shall not receive performance appraisals.

(B) RELATING TO SANCTION OR REMOVAL.—To the extent that the Attorney General and the Chairman adopt regulations under subsection (m) relating to the sanction or removal of an Electronic Payment System Judge and such regulations require documentation to establish the cause of such sanction or removal, the Electronic Payment System Judge may receive an appraisal related specifically to the cause of the sanction or removal.

(1) INCONSISTENT DUTIES BARRED.—No Electronic Payment System Judge may undertake duties that conflict with the duties and responsibilities of an Electronic Payment System Judge under this Act.

(m) STANDARDS OF CONDUCT.—The Attorney General and the Chairman shall adopt regulations regarding the standards of conduct, including financial conflict of interest and restrictions against ex parte communications, which shall govern the Electronic Payment System Judges and the proceedings under this Act.

(n) REMOVAL OR SANCTION.—The Attorney General and the Chairman acting jointly may sanction or remove an Electronic Payment System Judge for violation of the standards of conduct adopted under subsection (m), misconduct, neglect of duty, or any disqualifying physical or mental disability. Any such sanction or removal may be made only after notice and opportunity for a hearing. The Attorney General and the Chairman may suspend an Electronic Payment System Judge during the pendency of such a hearing. The Attorney General and the Chairman shall appoint an interim Electronic Payment System Judge during the period of any suspension under this subsection.

## SEC. 5. PROCEEDINGS OF ELECTRONIC PAYMENT SYSTEM JUDGES.

## (a) PROCEEDINGS.—

(1) IN GENERAL.—The Electronic Payment System Judges shall act in accordance with regulations issued by the Electronic Payment System Judges, the Attorney General, and the Chairman, and on the basis of a written record, prior determinations and interpretations of the Electronic Payment System Judges under this Act, and decisions of the court of appeals of the United States.

(2) JUDGES ACTING AS PANEL AND INDIVIDUALLY.—The Electronic Payment System

Judges shall preside over hearings in proceedings under this Act en banc. The Chief Electronic Payment System Judge may designate an Electronic Payment System Judge to preside individually over such collateral and administrative proceedings as the Chief Judge considers appropriate.

## (b) PROCEDURES.—

(1) COMMENCEMENT.—The Electronic Payment System Judges shall cause to be published in the Federal Register a notice of commencement of proceedings under section 3(c) to establish fees and terms for access to a covered electronic payment system.

## (2) MANDATORY NEGOTIATION PERIOD.—

(A) IN GENERAL.—Promptly after the commencement of a proceeding under section 3(c) to establish fees and terms for access to a covered electronic payment system, the Electronic Payment System Judges shall initiate a period for negotiations for the purpose of achieving a voluntarily negotiated access agreement. Nothing in this paragraph shall preclude the proceeding parties or any members thereof from conducting negotiations before or after the mandatory negotiation period for the purpose of achieving a voluntarily negotiated access agreement.

(B) LENGTH.—The period for negotiations initiated under subparagraph (A) shall be 3 months.

(C) DETERMINATION OF NEED FOR FURTHER PROCEEDINGS.—At the close of the period for negotiations initiated under subparagraph (A), the Electronic Payment System Judges shall determine if further proceedings under this Act are necessary.

## (3) PROCEEDING PARTIES IN FURTHER PROCEEDINGS.—

(A) IN GENERAL.—In any further proceeding ordered by the Electronic Payment System Judges under paragraph (2)(C), there shall be only 2 proceeding parties, 1 consisting of all providers of the covered electronic payment system and the other consisting of all merchants that have access to or seek access to the covered electronic payment system. Each proceeding party shall bear its own costs. A provider of a covered electronic payment system or a merchant that has access to or seeks access to the covered electronic payment system may choose not to participate in the proceeding as a member of a proceeding party, but unless such provider or merchant executes a voluntarily negotiated access agreement, such provider or merchant shall be bound by the determination of the Electronic Payment System Judges with regard to the fees and terms for access to the covered electronic payment system.

(B) RULE OF CONSTRUCTION.—Nothing in this paragraph may be construed to prohibit the proceeding parties or any members thereof in a proceeding under subparagraph (A) from negotiating and entering into a voluntarily negotiated access agreement at any other time.

## (4) REGULATIONS.—

## (A) AUTHORIZATION.—

(i) IN GENERAL.—The Electronic Payment System Judges may issue regulations to carry out the duties of the Electronic Payment System Judges under this Act. All regulations issued by the Electronic Payment System Judges are subject to the approval of the Attorney General and the Chairman. Not later than 120 days after the date on which all Electronic Payment System Judges are appointed under section 4(h)(1), the Electronic Payment System Judges shall issue regulations to govern proceedings under this subsection. In setting these regulations, the Electronic Payment System Judges shall consider the regulations issued by the Copyright Royalty Judges under section 803(b)(6) of title 17, United States Code.

(ii) SCOPE.—The regulations issued under clause (i) shall include regulations regarding